

AN ORDINANCE BY
COUNCILMEMBER FELICIA MOORE

08-0-

08-0-2256

AN ORDINANCE AMENDING CODE SECTION 2-1291 TO ADDRESS UNAUTHORIZED CONTRACTS AND/OR THE FURNISHING OF UNAUTHORIZED GOODS OR PERFORMANCE OF UNAUTHORIZED SERVICES UNDER AUTHORIZED CONTRACTS; AMENDING CERTAIN OTHER MISCELLANEOUS PROVISIONS IN SECTION 2-1291; AND FOR OTHER PURPOSES.

WHEREAS, the Atlanta City Council has been made aware of various instances in which goods have been provided or services have been rendered to the City under purported contracts that did not have appropriate legislative authorization, as set forth and required in the City's Code of Ordinances; and

WHEREAS, the Atlanta City Council also has been made aware of various instances in which goods have been provided or services have been rendered in excess of that allowed under contracts that did have appropriate legislative authorization; and

WHEREAS, services and goods being provided pursuant to unauthorized contracts and/or in excess of those allowed under authorized contracts undermine the Chief Financial Officer's ability to accurately determine the City's financial obligations and adequately maintain the City's budget; and

WHEREAS, Code Section 2-1291 currently addresses the inclusion of certain provisions in City contracts and the responsibilities and rights of the parties to City contracts; and

WHEREAS, it has been determined that it is in the City's best interest to amend Code Section 2-1291 to address issues concerning unauthorized contracts and services and goods provided in excess of those authorized by contracts, and to amend certain other miscellaneous provisions in that Code Section.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS, as follows:

Section 1. That Section 2-1291 of the City of Atlanta's Procurement and Real Estate Code is deleted in its entirety and replaced with the following:

Sec. 2-1291. Responsibilities and rights of parties to contract; contract clauses.

Each city contract for goods or services shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The chief procurement officer, after consultation with the city attorney, shall issue appropriate contract clauses addressing at least the following subjects, to the extent appropriate for the particular contract:

- (1) The unilateral right of the city to order changes in writing to the requirements for goods or services within the general scope of the contract;
- (2) The unilateral right of the city to order in writing a temporary suspension or delay to the provision of goods or services that does not alter the scope of the contract;
- (3) Responsibilities for performance and payment associated with variations occurring between estimated quantities of goods or services in a contract and actual quantities;
- (4) Defective pricing;
- (5) Liquidated damages and service level credits;
- (6) Specified excuses for delay or nonperformance;
- (7) Termination of the contract for default;
- (8) Termination of the contract, in whole or in part, for the convenience of the city;
- (9) Site conditions differing from those indicated in the contract or ordinarily encountered in similar situations; and
- (10) An acknowledgement by all parties contracting with the city as follows:

“Contractor acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the City’s Council and approval of the Mayor. Under Georgia law, Contractor is deemed to possess knowledge concerning the City’s ability to assume contractual obligations and the consequences of Contractor’s provision of goods or services to the City under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that the Contractor may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Contractor agrees that if it provides goods or services to the City under a contract that has not received proper legislative authorization or if the Contractor provides goods or services to the City in excess of the any contractually authorized goods or services, as required by the City’s Charter and Code, the City may withhold payment for any unauthorized goods or services provided by Contractor. Contractor assumes all risk of non-payment for the provision of any unauthorized goods or services to the City, and it

waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to the City, however characterized, including, without limitation, all remedies at law or equity."

This acknowledgement shall be a mandatory provision in all city contracts for goods and services, except revenue-producing contracts.

Section 2. That all ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed only to the extent of such conflict.

AN ORDINANCE BY
COUNCILMEMBER FELICIA MOORE

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**AN ORDINANCE AMENDING CODE SECTION
2-1291 TO ADDRESS UNAUTHORIZED
CONTRACTS AND/OR THE FURNISHING OF
UNAUTHORIZED GOODS OR
PERFORMANCE OF UNAUTHORIZED
SERVICES UNDER AUTHORIZED
CONTRACTS; AMENDING CERTAIN OTHER
MISCELLANEOUS PROVISIONS IN SECTION
2-1291; AND FOR OTHER PURPOSES.**

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WHEREAS, the Atlanta City Council also has been made aware of various instances in which goods have been provided or services have been rendered in excess of that allowed under contracts that did have appropriate legislative authorization; and

WHEREAS, services and goods being provided pursuant to unauthorized contracts and/or in excess of those allowed under authorized contracts undermine the Chief Financial Officer's ability to accurately determine the City's financial obligations and adequately maintain the City's budget; and

WHEREAS, Code Section 2-1291 currently addresses the inclusion of certain provisions in City contracts and the responsibilities and rights of the parties to City contracts; and

WHEREAS, it has been determined that it is in the City's best interest to amend Code Section 2-1291 to address issues concerning unauthorized contracts and services and goods provided in excess of those authorized by contracts, and to amend certain other miscellaneous provisions in that Code Section.

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- (10) An acknowledgement by all parties contracting with the city as follows:

Comment [TGT1]: Do we mean this to be a synonym with "incorrect?"

Comment [TGT2]: Is "cause" more precise?

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Comment [TGT3]: So this will be a defined term in the K referring to all contractors (in the event there are multiple contracting parties as stated above)

waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to the City, however characterized, including, without limitation, all remedies at law or equity.”

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